CANADIAN PETROLEUM ASSOCIATION

Response to Alberta Environment's Draft Regulations Under the Proposed Alberta Environmental Protection and Enhancement Act

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PREFACE

This document presents the Canadian Petroleum Association's (CPA) response to the Government of Alberta's *Draft Regulations Under the Proposed Alberta Environmental Protection and Enhancement Act*. These regulations are a consolidation of nine existing acts and their regulations: Agricultural Chemicals Act, Beverage Container Act, Clean Air Act, Clean Water Act, Ground Water Development Act, Hazardous Chemicals Act, Land Surface Conservation and Reclamation Act, Litter Act and some sections of the Department of Environment Act. The CPA response to the draft regulations, along with responses from other interested parties, will be incorporated into a final version of the regulations to be presented to the Legislative Assembly of Alberta in spring 1992.

This response to Alberta Environment's draft regulations presents perspectives and concerns expressed by CPA member companies in the upstream petroleum industry. The oil and gas sector is an important stakeholder in the environmental issues discussed in these regulations. CPA members make about two-thirds of all upstream petroleum industry expenditures in Canada; they also produce about 80 percent of Canada's crude oil and 70 percent of its natural gas, and conduct more than 98 percent of the country's pipeline transportation. These activities occur largely in Alberta and contribute significantly to Alberta's economy.

Through this document, the CPA is fulfilling its role of acting as a forum through which upstream petroleum industry members share information and work together on issues important to them, the government and the public. Other major responsibilities of the CPA include informing the Canadian public about critical energy issues, preparing technical and analytical submissions to government on behalf of the upstream petroleum industry, and gathering and disseminating operating, economic and policy information for members. In cooperation with government and environmental agencies, the CPA also commissions research and helps set guidelines for the upstream petroleum industry.

This document is divided into four main sections: Introduction, Key Issues, Concerns by Regulation and Appendix. For a thorough review of the CPA response to the draft regulations, read the entire document. For a quick overview of major concerns, read the Introduction on page 1 and the Key Issues, starting on page 3.

Further information on the CPA's response to the environmental legislation can be found in the *CPA's Response to the Proposed Alberta Environmental Protection and Enhancement Act.*

INTRODUCTION

The Introduction provides the CPA's perspectives on preparing environmental legislation; it also provides statements of both the CPA's support and concerns about the draft regulations. Background information on past and present CPA environmental activities is also referenced.

KEY ISSUES

The Key Issues section presents the issues of most importance to the CPA. Some of these issues are general in nature and some relate to specific sections of the regulations.

CONCERNS BY REGULATION

This part of the document presents additional CPA comments on specific sections of the regulations.

APPENDIX

This section contains the *CPA's Environmental Code of Practice.*

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APPENDIX A: CPA *Environmental Code of Practice*

The Canadian Petroleum Association supports the Alberta government's preparation of legislation that will help protect and preserve the environment. The association also strongly supports the consolidation of existing legislation to provide streamlined, consistent and coordinated laws, and to eliminate current regulatory duplication.

Although the CPA supports the general intent of the draft regulations, it has concerns about the current contents and strongly recommends the government address these concerns in the next draft. The CPA also requests the government continue its multistakeholder consultation on the regulations and on forthcoming guidelines under the regulations. The CPA is an important stakeholder in environmental law and its viewpoints must continue to be heard.

In expressing its views and concerns in this document, the CPA continues its commitment to the environment. For many years, the association has managed environmental protection efforts in the upstream petroleum industry by supporting research programs, preparing environmental codes of practice and guidelines for use by its members, and participating in cooperative projects with government. Since 1970, CPA members have contributed approximately $300 million toward environmental research. A comprehensive description of the CPA's environmental program, including future activities, is contained in the Association's Response to the Alberta Environmental Protection and Enhancement Act or from the CPA office. The *CPA Environmental Code of Practice,* developed in 1988 to further promote environmental considerations in the upstream petroleum industry, is presented in Appendix A.

This section of the CPA's response to the *Draft Regulations Under the Proposed Alberta Environmental Protection and Enhancement Act* (hereafter referred to as the Act) presents the CPA's key issues of concern: 6 general issues and 20 issues that relate to specific regulations. The 20 issues that relate to specific regulations are each preceded by a brief overview of the regulation. As well, they are presented in the same order as the regulations in the government's review document.

GENERAL ISSUES

ISSUE 1: Role of the ERCB in Environmental Legislation

The CPA requests the Energy Resources Conservation Board (ERCB), rather than Alberta Environment, be the "one-window" agency for regulating all aspects of energy projects, including environmental assessments, approvals, reporting and compliance. Currently, the ERCB regulates these areas very effectively.

A one-window approach will serve three purposes. It will:

1. save time by eliminating Alberta Environment's current unnecessary duplication of ERCB requisites

2. ensure coordination of all Alberta Environment and ERCB requirements

3. provide the most accurate and knowledgeable consideration of energy projects because of the ERCB's extensive technical expertise and broad understanding of all petroleum industry issues

To continue to be the one-window agency for the upstream petroleum industry, the CPA recommends the ERCB be added to the regulations, as follows:

- as the agency for receiving reports of oil and gas industry releases, including flaring, in the Release Reporting Regulation

- as a participant in the preparation of terms of reference for proponents' EIA reports, and as a reviewer of oil and gas industry project applications, in the Environmental Assessment Regulation

- as the coordinator of oil and gas industry approvals, in the Approvals Procedure Regulation

- as the agency with sole responsibility for regulating oilfield wastes, in the Hazardous Waste Regulation

- as the agency with sole responsibility for licensing water well drillers for deep source-water wells for drilling operations, in the Water Well Drilling, Construction, Maintenance and Reclamation Regulation

The ERCB's role in these areas is also discussed later in this submission, in the section, Concerns by Regulation.

Continued ERCB involvement as the one-window agency in these matters will ensure timely, comprehensive and cost-efficient procedures that will benefit not only industry but also government and the public. The ERCB can integrate health, environmental, technological and economic information into decision making to achieve sustainable development in Alberta.

ISSUE 2: Need for Continued Consultation

The CPA strongly supports Alberta Environment's efforts to consult with interested parties on the development of the regulations under the Act. Open consultation will result in legislation that industry, the public and government can support and follow. The CPA urges consultation and open dialogue be continued on the issues related to the regulations, forthcoming guidelines and revised emission standards under the regulations.

The CPA recommends the government hold consultation workshops, in addition to those already held to explain the regulations, for complicated or contentious issues.

The key areas the CPA recommends be discussed in workshops with Alberta Environment and other stakeholders are:

- economic consequences of the environmental regulations
- substance release
- regulation of pipelines
- definition of person responsible for contaminated site
- reclamation procedures, including reclamation security requirements
- phase-in of hazardous waste regulations
- enforcement

Workshops on these key areas must be arranged before the regulations are redrafted to allow the addition of workshop results to the regulations. The CPA is available to assist the government in arranging the workshops.

ISSUE 3: Economic Implications of Regulations

Over time, the proposed environmental regulations will ensure the safekeeping of the environment to the benefit of all citizens. The benefits from environmental protection will not be accrued without economic and social costs, however, as industry and all of society adjust their priorities, spending and lifestyles to accomplish these benefits.

The CPA is not opposed to necessary and valid costs for environmental protection. It is opposed, however, to unnecessary costs resulting from inefficiencies, duplication or regulations that will not produce significant environmental benefit. It is also opposed to costs that result from uneven application of the regulations.

The CPA is concerned parts of the regulations, as they are now drafted, will be so costly for the upstream petroleum industry that it will cause the industry further hardship in already difficult economic times. Details on the CPA's concerns over costs are presented throughout this submission with those issues to which they are relevant.

The CPA urges the government to conduct an economic impact assessment of the costs of the regulations to each industry sector. Each sector could be asked to cooperatively develop the costs and benefits of the regulations.

The government should then use this information on costs in finalizing the regulations and preparing guidelines. Regulations and guidelines should govern areas where impacts are potentially the greatest and make requirements that will balance costs against benefits to produce the greatest overall benefit to society.

A method the CPA found to be very useful in balancing environmental benefits is the method used in the Clean Air Strategy for Alberta. In this consultative approach to providing solutions for air emissions:

- problems are identified using scientific assessments
- priorities are set for identified problems
- an appropriate management approach (local, zonal, regional or global) is determined
- goals and targets are set that integrate environmental and economic concerns
- an action plan is developed and implemented
- the action plan is monitored and performance is assessed

The CPA recommends the government use this or a similar method in preparing the final environmental regulations and guidelines to ensure costs and results are acceptable.

ISSUE 4: Level of Detail and Naming of Regulations

The CPA is concerned about the lack of procedural detail in the regulations. The Act states the regulations will contain procedural details, but instead, the regulations often contain loosely worded policies and references to guidelines or manuals for these details.

The CPA is concerned this approach will cause industry to rely on guidelines to meet the onerous requirements of the law. A specific concern is the guidelines and manuals become prescriptive, which is not ordinarily the case. The CPA feels guidelines should be set out as regulations when the appropriate level of detail is available. To ensure industry is able to operate efficiently under the regulations, the regulations must clearly define industry's legal obligations. The CPA makes some recommendations on these areas throughout this submission.

To help industry understand its legal obligations, the CPA also suggests the regulation subheadings mirror the subheadings found in the Act. This will allow easier cross-referencing between the Act and regulations.

ISSUE 5: Amendment of Emission and Discharge Standards

The regulatory outline for the Substance Release (Maximum Levels Air Emissions) Regulation states that the current amounts, levels or concentrations of a substance that may be released into the environment from specified sources, which have been maintained from the Clean Air (Maximum Levels) Regulation, will be amended in the future. Similarly, the regulatory outline for the Substance Release (Stormwater Drainage and Wastewater Systems Regulation) states that references it contains to standards and guidelines will be updated.

The CPA strongly recommends any new standards be thoroughly reviewed for their health, environmental and economic impacts and the relation of these impacts to the principles of sustainable development. The CPA urges expeditious action on this, using

the management process for the Clean Air Strategy for Alberta discussed above in Issue 3. The CPA is prepared to lend its full support for such a review.

ISSUE 6: Progress on Economic Instruments

The CPA is pleased the Act (Section 32) provides the opportunity for future use of economic instruments for environmental protection. Government, industry and the public require this flexibility and innovation to best address increasingly complex and costly environmental issues.

The CPA is studying the feasibility of using economic instruments and would like to be part of multistakeholder consultations to further analyze and implement some of the concepts. The CPA urges the government to begin the consultative process as soon as possible. The CPA believes economic instruments can be used to promote environmental protection at the least cost to society. The association also believes that government should not use the instruments to generate revenue.

SPECIFIC ISSUES

Public Disclosure Regulation

The proposed Public Disclosure Regulation will create a procedure for making available to the public a variety of documents about the environmental impact of public and private developments. These documents are described in Section 33(1) of the Act. The procedures described in the Public Disclosure Regulation will address the release of documents issued by Alberta Environment and documents held by proponents, applicants and approval holders.

ISSUE 7: Administrative Costs of Public Disclosure

The CPA supports the intent of Section 33(1) of the Act, which states that certain specified information will be considered public information and will be disclosed to the public in the manner specified in the regulations.

The regulations (Sections 2 [lines 22-32] and 3 [lines 37-40]) state the government will meet any person's request for government information or information provided to the government under certain sections of the Act or the Environmental Assessment Regulation.

The regulations (Section 4 [lines 47-73]) also state approval holders or applicants for approvals or certificates of variance must provide information requested by any person. Also, Government must be notified of the request.

Although the CPA supports the intent of this provision, it is concerned the manner for providing information specified in the regulations will be unnecessarily costly for both the government and industry.

The CPA suggests costs be reduced in several ways:

1. limit the scope of persons eligible to receive information
2. charge nominally for access to or copies of information
3. avoid industry and government duplication of services to provide information

In the first suggestion, the CPA requests limiting the scope of persons eligible to receive information to avoid abuse of the public disclosure process. The scope could be limited by changing persons eligible to receive information from "a person" (as in Sections 2 [lines 22-32 and 3 [lines 37-40]) and "any person" (as in Section 4 [lines 47-73]) to "persons directly affected by the development about which they are requesting information".

This suggested wording is similar to the Oil and Gas Conservation Act (Section 31), which defines "local intervenor" as:

"a person

(1) occupying, or
(2) entitled to occupy, or
(3) having an interest in

land which may be directly and adversely affected by a decision of the Board concerning the matter before it." This definition has very effectively governed ERCB hearings, allowing expression of valid concerns and avoiding spurious and vexatious input.

In the second suggestion, the CPA requests nominal charges for information be implemented to both discourage requests from merely curious individuals and recover some administrative costs. A library-style system could be used, through which individuals could request and review documents for an access and photocopying fee. A similar system is currently used by the Alberta court system, which requires individuals to pay to review public documents.

In the third suggestion, the CPA recommends costs be reduced by not requiring industry to duplicate government services for providing information. Section 4 (lines 47-73) of the regulation requires industry to provide certain information regarding its approval applications, certificates of variance and environmental monitoring data as requested by any person and to report its responses to the government. It also states that government would respond to unanswered requests and seek cost recovery from industry members who do not answer requests.

This requirement results in each company having to implement and maintain information distribution systems that duplicate the government's system required under Sections 2 (lines 22-32) and 3 (lines 37-40).

As well as being costly, this duplication would create confusion among individuals wanting to request information.

The CPA feels the most cost-effective distribution system for the oil and gas sector would be for the ERCB to be the centralized source for all information available under this regulation. This would solve industry's concerns over duplication of administrative efforts and costs, and confusion about where individuals can apply for information. This would also eliminate the need for a procedure to ensure industry is complying with this regulation.

Environmental Assessment Regulation

The proposed Environmental Assessment Regulation will provide a means of assessing the potential environmental impacts of activities listed in the Act. The Environmental Assessment Regulation will establish:

- *publication requirements for public notices*
- *schedules for public reviews*
- *components of screening reports*
- *a public register to list the status of activities under review*
- *procedures for providing statements of concern*
- *procedures for public participation*
- *activities subject to mandatory environmental assessment*

ISSUE 8: Timeliness of Legislated Environmental Assessment Process

The Environmental Assessment Regulation contains only two specific timing requirements:

- Section 3(3)(c) (lines 47-49), which requires directly affected persons to file statements of concern within 30 days of publication of a notice of screening

- Section 9(1) (lines 191-213), which requires proponents to &publish notice that Environmental Impact Assessment (EIA) reports are available within 10 days of reports being submitted to the Director

The only other references to time requirements appear in Section 5(1) (lines 74-97), which requires the Director to publish notice of the screening decision "in a timely fashion", and Section 6(3) (lines 118-119), which requires the Director to publish notice of the availability of screening report summaries "in a timely fashion".

The potential for delay in this process is enormous and the CPA is concerned delays will be costly to the industry. To avoid delays, the CPA requests the regulations require:

- a 30-day limit for the Director to complete the screening step and render a decision on the acceptability of the terms of reference for the EIA report

- a 30-day limit on public response to the proposed terms of reference

- EIA proponents to meet with the Director and other stakeholders to decide on an acceptable EIA schedule

Also, to ensure the EIA process is not unnecessarily long and complicated, the CPA recommends the regulations allow the EIA assessment approach to be modified to suit the development.

This flexibility would promote timely assessments of each development and discourage needless costly reviews of routine industry activities. Another method for the government to shorten the review process is to prepare EIA guidelines that promote consultation, mediation and education as alternatives to a formal review process. These practices offer more positive, more timely and less costly opportunities for discussion and understanding than the review process in the Environmental Assessment Regulation.

CPA member companies have successfully used these alternative processes for some major developments in recent years and found they can promote cooperation and reduce the costs and delays of EIAs. As well, because mediation is recognized in the draft Canadian Environmental Assessment Act, promotion of mediation in Alberta's regulations would further harmonize federal and provincial government approaches.

ISSUE 9: Applicability of EIA Process to Routine Industry Activities

The review process described by the Environmental Assessment Regulation addresses all activities undertaken in the exploration, development, operation and decommissioning phases of the oil and gas industry. The majority of these activities will also be subject to approvals, as described under the Class of Activities Regulation and the Approvals Procedure Regulation.

The CPA recognizes the importance of assessment and mitigative actions to minimize harmful effects associated with upstream petroleum industry activities. However, the CPA is very concerned that unless the EIA process is carefully managed, the requirements for screening and for EIA report preparation could be extended to include routine industry activities (e.g., minor infill drilling and production tie-ins, minor process changes, de-bottlenecking, etc.). The CPA is also concerned the EIA process could be made retroactive, requiring assessments of previously approved operations at the approval-renewal stage.

This would unnecessarily complicate the regulatory process and impose a competitive disadvantage on the Alberta-based segment of the upstream petroleum industry.

The CPA is prepared to work closely with the government in the development of administrative guidelines for the EIA process that would meet the complementary needs of effective environmental assessment, administrative efficiency and industry competitiveness.

Environmental Assessment (Mandatory Activities) Regulation

The Environmental Assessment (Mandatory Activities) Regulation will provide a schedule of activities for which EIAs are mandatory.

ISSUE 10: Basis for Mandatory Activities List

The CPA feels strongly that criteria for selecting activities for the mandatory activities list should be objective and based on scientific assessment of the activities' environmental impacts. The criteria should not be based solely on the type and scale of the activity. The criteria should be carefully applied to all activities to:

- ensure protection of the environment wherever it is necessary
- apply legislation fairly
- ensure the government EIA process is not overloaded, which could result in delays in projects
- avoid penalizing activities where controls and procedures for minimizing impacts are known, commonly used and effective

The CPA feels the list now includes activities that do not result in significant environmental impacts and excludes some that do.

For example, the CPA questions why large road systems being constructed by government or the forest industry, or large agri-business operations are not regulated, but many operations associated with the oil and gas industry are regulated. Another example is in the Environmental Assessment (Mandatory Activities) Regulation where some activities such as manufacturing of concrete, ground thawing, construction of subsurface sewage disposal systems and installation of environmental monitoring equipment, are regulated if they are done during upstream petroleum developments. However, if undertaken for other purposes, these activities do not require EIAs.

Class of Activities Regulation

The Class of Activities regulation will designate activities that require approval. Activities will be grouped in classes, with each class having common application procedures and information requirements. The creation of classes of activities is intended to make the approval system more efficient by establishing a one-window approach for administering approval applications in each class.

ISSUE 11: Regulating all Pipeline Construction

Section 6(c) (lines 651) of the Class of Activities Regulation requires conservation and reclamation approval for the construction, operation or reclamation of all pipelines, except plowed-in lines. Currently, under the Land Surface Conservation and Reclamation Act, only pipelines 16 km or greater in length and 150 mm (outside diameter) or greater in diameter are subject to regulation. This legislation also applies to pipeline alterations or extensions that meet the length requirement and any extension that crosses a named river valley.

The upstream petroleum industry recognizes that pipeline projects are reviewed by the ERCB and, where appropriate, Alberta Environment, to ensure any environmental impacts are avoided or mitigated. However, the CPA is concerned the regulation is requesting an excessive amount of information for conservation and reclamation approvals for some pipeline projects.

This requirement will place an excessive administrative burden on both industry and government. For example, in 1990, industry made 1887 pipeline applications to the ERCB, of which 490 were referred to Alberta Environment and only 69 were regulated by Alberta Environment. If Alberta Environment had been regulating all pipelines, industry would have had to prepare and government would have had to process 1328 more pipeline applications.

A solution to this administrative burden is a multi-tiered application system, where detailed applications need be prepared only for pipelines with significant potential environmental impacts. Less detailed applications can be prepared for projects with negligible impacts. The CPA's task force on pipeline reclamation believes public, government and industry involvement is necessary in developing this approach.

Approvals Procedure Regulation

The Approvals Procedure Regulation will define methods for and contents of applications for approvals, and applications to amend and renew approvals. This regulation will include information on matters such as application and public notification requirements; application review criteria; terms, conditions and duration of approvals; and cancellation and transfer of approvals. All information requirements will be described according to each class of activity. More detailed information and application requirements will be contained in guidelines.

ISSUE 12: Approvals Renewals

The Approvals Procedure Regulation provides for the renewal of approvals through the same process as for initial approvals.

The CPA is concerned this approval renewal process does not recognize companies that have maintained a good compliance record over the previous approval period. Companies that have maintained a good compliance record should receive their approvals without having to complete the full initial approval procedure. Companies that have not performed well should be required to follow the full approval renewal procedure. However, if an activity has changed since the last approval and could cause significant environmental impacts, even a good performer should be required to complete the full approval renewal procedure.

This approach would expedite approval renewals and recognize good performance without any detriment to the intent of the regulation.

Environmental Appeal Board Regulation

The Environmental Appeal Board Regulation will provide a new means of hearing appeals on administrative matters specified in the Act. The Board will make recommendations to the Minister, who will make a final determination of all appeals. The Board will also review and make final decisions on requests to have information submitted to the government kept confidential.

The Environmental Appeal Board will act as a standing board, with smaller panels of Board members being established to hear appeals.

The CPA does not have any key issues to raise on this regulation.

Environmental Appeal Board (Security for Costs) Regulation

The Environmental Appeal Board (Security for Costs) Regulation will outline the procedure for the Minister to demand security for costs from a person served with an environmental protection order or enforcement order who has:

- *filed a notice of objection*
- *requested a stay of the order*

The CPA does not have any key issues to raise on this regulation.

Substance Release (Maximum Levels Air Emissions) Regulation

The Substance Release (Maximum Levels Air Emissions) Regulation will be a modification of the regulations under the current Clean Air Act.

The modifications will include:

- *redrafting current ambient air quality regulations as guidelines*
- *the use of source monitoring of plants to determine compliance with approval limits and as a basis for enforcement*
- *changes to definitions to ensure consistency with federal regulations and the inclusion of new technical terms*
- *the addition of new technical definitions for greater clarity*
- *the prohibition of burning of solid waste from post and pole operations and used power, telegraph and telephone poles that contain wood preservatives*
- *prohibitions of releases of specified ozone-depleting substances and manufacture and sale of things containing or made with ozone-depleting substances*

ISSUE 13: Redrafting of Ambient Air Quality Standards as Guidelines

The CPA supports the government's decision to redraft the Ambient Air Quality Standards as guidelines. This will allow more flexibility to revise the standards until they become acceptable and function well.

The CPA recommends the government base new standards on scientifically sound assessments of environmental and health impacts. With the continuing development of a more stringent enforcement policy, this undertaking is urgent. The CPA would be pleased to contribute constructively to this effort.

The CPA also recommends the government use an approach to guideline development similar to that used in the Clean Air Strategy for Alberta. This strategy bases its work on scientifically defensible ambient air quality and source emission standards.

The Clean Air Strategy for Alberta also provides opportunities for multistakeholder input into air quality issues. The CPA requests the same opportunity for input into ambient air quality guidelines and design criteria for new projects.

Ambient air quality guidelines could be easily developed along with the Clean Air Strategy for Alberta because the timeline for redrafting the strategy's standards is the same as that for finalizing the Act's regulations.

ISSUE 14: Cost of Air Pollution Abatement and Monitoring Equipment

The proposed regulation shifts the focus on compliance from ambient air monitoring to source monitoring. The CPA supports this approach; however, it is concerned about the cost of retrofitting all existing facilities with new pollution abatement and monitoring equipment to meet source emission monitoring standards. Based on past performance experience, the CPA does not believe all facilities, e.g., smaller facilities, need to be monitored. The CPA requests the regulations contain provisions such as royalty rebates or other incentives, for offsetting retrofitting costs.

Substance Release (Stormwater Drainage and Wastewater Systems) Regulation

The Substance Release (Stormwater Drainage and Wastewater Systems) Regulation will be a modification of current regulations under the Clean Water Act and some aspects of the Water Resources Act.

The modifications will include:

- *changing "sewer systems" references to "wastewater systems" and "stormwater drainage systems"*
- *creating definitions for the owners of stormwater drainage and wastewater systems*

- *updating references to standards and guidelines*
- *enhancing requirements for certification of wastewater systems operators*

The CPA does not have any key issues to raise on this Substance Release (Stormwater Drainage and Wastewater Systems) Regulation.

Substance Release (Industrial Plants) Regulation

The Substance Release (Industrial Plants) Regulation will cover all industrial plants not covered in the Substance Release (Stormwater Drainage and Wastewater Systems) Regulation. In the approvals part of the Act, certain industries may need approval to discharge to a municipal wastewater or stormwater drainage system.

The CPA's key issues on the Substance Release (Industrial Plants) Regulation are presented in Issue 5.

Person Responsible for a Contaminated Site

The Act protects Alberta taxpayers by ensuring persons clearly responsible for contamination pay for site cleanup. Various provisions in the Act define "person responsible" for various purposes. Some of the provisions are in the Act and others will be in the regulations. To develop this important definition, Alberta Environment proposes establishing a working group of key stakeholders and assigning it the task.

ISSUE 15: Input into Definition of Person Responsible for Contaminated Site

The CPA supports the government's decision to further define "person responsible for a contaminated site". It is an important definition with potentially significant impacts on long-term liabilities associated with many industry activities.

The CPA has nominated a participant for the proposed working group for establishing the definition of "person responsible for a contaminated site". Task force members can provide valuable information on petroleum industry operations as well as gain insight into the perspectives of government and other industry sectors.

The CPA recommends the working group also define acceptable levels of contamination after site cleanup.

Release Reporting Regulation

The Release Reporting Regulation will consolidate provisions currently found in the Clean Water (General) Regulation, Clean Air (General) Regulation and Hazardous Waste Regulation. It will provide consistent reporting requirements for all types of releases. Reportable quantities will reference related federal legislation, namely the Transportation of Dangerous Goods Act (Canada) and the Canadian Environmental Protection Act.

Requirements for written release reports will set out the types of releases that must be reported in writing.

The CPA does not have any key concerns to raise on this regulation.

Conservation and Reclamation Regulation

The Conservation and Reclamation Regulation will encompass issues currently contained in the Land Surface Conservation and Reclamation Act (Part 3), Inquiry Procedure Regulation, Administrative Transfer Regulations (Part 3), and Council's Administrative Jurisdiction Regulation. The regulation will contain modifications to:

- *conservation and reclamation council administration*
- *the definition of "specified land"*
- *inspectors' powers*

- *the appointment of reclamation officers*
- *administrative transfer of non-designated activities*
- *reclamation inquiries and certificates*

The regulation will also contain a new provision for environmental protection orders.

ISSUE 16: Definition of Reclamation

The CPA requests the definition for reclamation in Section 1(p) (lines 110-116) of the Conservation and Reclamation Regulation be expanded to ensure utmost clarity. Section 1(p) (lines 110-116) currently defines reclamation as:

> all practicable and reasonable methods of designing and conducting an activity to ensure
>
> i) stable, non-hazardous, non-erodible, favourably drained soil conditions, and
>
> ii) equivalent land capability
>
> upon abandonment

The CPA is not clear whether this definition includes decommissioning of facilities, decontamination of the site and revegetation.

The CPA also requests clarification of required reclamation for pipeline rights-of-way. The definition should state that a pipeline is considered to be reclaimed when the right-of-way has been stabilized and revegetated following pipeline construction. Accurate definitions are necessary to determine when a company's security deposit will be returned.

ISSUE 17: Reclamation Liability

The CPA has several serious concerns about the reclamation liabilities specified in the Conservation and Reclamation Regulation. Section 20 states that for certain specified lands, operators are responsible for reclamation for up to five years from the date of issue of the reclamation approval. Section 21 states that for other specified lands, operators are responsible for reclamation for up to 25 years from the date of issue of the approval.

The CPA understands the need for responsible land reclamation and has worked toward this for many years. A current association project is the development of industry standards for site decommissioning.

The CPA has several concerns about the current reclamation liability requirements included in the regulation. First, the CPA is opposed to any liability period after the issuance of a reclamation approval. Once an approval is received, the approval holder should be absolved from further liability or responsibility, and the reclamation security should be returned.

If this is the intent of the current regulation, the regulation should be reworded to avoid confusion.

The CPA stresses that reclamation approvals should not be delayed if the liability requirements are removed from the regulation. Once a site has been satisfactorily reclaimed, government should issue the reclamation approval quickly.

Second, to assist industry in determining when it has satisfactorily reclaimed the land, the CPA requests the regulations include objective reclamation criteria. By knowing the criteria, the upstream petroleum industry will be able to strive toward satisfactory performance standards. This issue is also discussed in Issue 16.

Last, the CPA believes wells orphaned before 1938 should be the responsibility of the federal government and wells orphaned

after 1938 should be the responsibility of industry. Before 1938, the federal government was responsible for regulating well drilling; in 1938, the ERCB was established and began to regulate well drilling. The ERCB is now reviewing a proposal on this issue presented by the CPA, Independent Petroleum Association of Canada and the Small Explorers and Producers Association of Canada.

The CPA requests the government hold a workshop with all stakeholders to discuss reclamation liability (See Issue 2).

Committees Regulation

The Committees Regulation will:

- *continue the current Crown Mineral Disposition Review Committee (Land Conservation Regulations: Part 2)*
- *continue the Exploration Review committee and the Development and Reclamation Review Committee under the new name of Conservation and Reclamation Review Committee*
- *formalize the current Reclamation Research Technical Advisory Committee*

The CPA does not have any key issues to raise on the Committees Regulation.

Conservation and Reclamation Security Regulation

This regulation is a modification of the Conservation and Reclamation Security Regulation and will govern:

- *activities on specified land that require formal approvals*
- *security relating to other activities that do not require formal approval*

ISSUE 18: Security Requirements

Section 6 (lines 226-230) of the Conservation and Reclamation Security Regulation states security requirements are to be determined at the discretion of the Director. The CPA requests the Director be provided criteria in the regulations to allow industry to estimate its financial liabilities.

The CPA also requests the criteria be objective, scientifically substantiated and applied equally to all industry sectors and all companies within the sectors. The security deposits should also be based on a company's past performance in reclamation of its sites. With this system, a company with good past performance would provide a smaller security deposit than a company that is new or has a poor reclamation record.

In Issue 2, the CPA has asked the government to arrange a multistakeholder workshop on reclamation, including reclamation security. The CPA can discuss its reclamation security concerns in more detail at the workshop.

Water Well Drilling, Construction, Maintenance and Reclamation Regulation

The Water Well Drilling, Construction, Maintenance and Reclamation Regulation will be a modification of the:

- *Ground Water Development Regulations*
- *Water Well Drilling and Construction Regulation*
- *Ground Water Development Forms Regulation*

Modifications will include:

- *a licensing system based on separate classes of licenses*
- *additional requirements for licence applications*
- *limiting licenses to one-year terms*
- *more stringent well construction and completion requirements*

- *the addition of security requirements*
- *the addition of a general duty by the well owner after well completion to prevent entry of surface water or other foreign materials into the well*

ISSUE 19: Exemption for Some Types of Wells

The CPA supports the more stringent requirements for drilling, testing, completing, disinfecting and reclaiming of water wells in the new Water Well Drilling, Construction, Maintenance and Reclamation Regulation.

For these requirements to be effective, however, the CPA strongly believes they must be applied, without exception, to all ground water users. Section 5 (lines 111-124) currently exempts landowners from the need for a license for drilling or reclaiming a well for domestic or agricultural use.

With landowner wells numbering the highest of all water wells in the province, the CPA feels this exemption contradicts the regulation's intent to better manage water resources. For effective management, controls must be applied to the largest portion of water wells. The CPA recommends the government redraft the regulation to make it more purposeful and equitable.

ISSUE 20: Inconsistent Ground Water Definitions

The definition of ground water and terms related to ground water are inconsistently used in both the Act and regulations. Examples of this are as follows:

- Section 132(e) of the Act states "Ground water means all water under the surface of the ground."

- Section 1(xx) of the Act states "Surface water means water in a watercourse and water at a depth of not more than 15 metres beneath the surface of the ground."

- Section 1(s) of the Hazardous Waste Regulation states "Useable ground water means an aquifer or its portion which contains less than 4000 ppm of total dissolved solids."

The CPA requests the government make the ground water definitions consistent throughout the Act and regulations. If there is a reason for the inconsistency, the CPA requests clarification.

Potable Water Regulation

The Potable Water Regulation will be a modification of the current:

- *Clean Water (General) Regulation*
- *Clean Water (Municipal Plants) Regulation*

Modifications will include:

- *changes to the definition of "municipal plant"*
- *transition periods for the new standards and design requirements*
- *more stringent water disinfection and testing programs*
- *revised fluoridation standards*
- *duties for ensuring minimum water quality and fluoridation standards*
- *a requirement for a certified operator to be designated in charge of a facility*
- *a requirement for immediate reporting of the failure or shutdown of water disinfection or fluoridation equipment*
- *enhanced certification requirements for waterworks operators*
- *certificate renewal conditions*

The CPA does not have any key issues to raise on the Potable Water Regulation.

Waste Minimization and Recycling (Beverage Containers) Regulation

The Waste Minimization and Recycling (Beverage Containers) Regulation will deal with waste minimization and recycling of beverage containers. The regulation will incorporate the current

legislative objective for returning containers to a depot or retailer for a cash refund.

The CPA does not have any key issues to raise on the Waste Minimization and Recycling (Beverage Containers) Regulation.

Hazardous Recyclable Regulation

The current Hazardous Waste Regulation exempts hazardous recyclable wastes from the application of the Hazardous Chemicals Act and regulations. However, this new Hazardous Recyclable Regulation will control the treatment, storage and recycling of these substances as follows:

- *small quantities of hazardous recyclables will be exempt*
- *design and operating standards for hazardous recyclable storage facilities will be established*
- *operators of facilities must keep operating records and classify hazardous equipment according to the Hazardous Waste Regulation*
- *operators of hazardous recyclable facilities must provide financial assurance to the Director to cover reclamation, closure and post-closure costs*
- *importation of hazardous recyclables into Alberta must be authorized by the Minister*

ISSUE 21: Value of Oil Reclaimers

This Hazardous Recyclable Regulation will have to be carefully written to encourage the continuation of companies that reclaim both crude and refined oil. These companies have become an integral and important part of the recycling efforts of the oil and gas sector. In the first 10 months of 1991, they reclaimed 38,100 cubic metres of crude oil.

The CPA recommends that oil and oily wastes not be classified as hazardous under the Hazardous Waste Regulation. The CPA believes used and crude oil that is properly recycled or reclaimed is not hazardous. The definition of waste oil under the Transportation of Dangerous Goods Regulation is based on flashpoint, which should not be used for classifying a waste as hazardous.

Hazardous Waste Regulation

This Hazardous Waste Regulation will contain a modification of the definition of hazardous wastes currently in the Hazardous Chemicals Act.

Hazardous wastes will be defined using a schedule of substances and criteria for waste definition and classification.

ISSUE 22: Overlap of Roles in Oilfield Waste Regulation

The CPA believes the Hazardous Waste Regulation should fully delegate responsibility for oilfield waste management to the ERCB. The ERCB is the petroleum industry's primary regulating body and is familiar with the nature of oilfield wastes. Also, the ERCB's role in environmental matters outlined in Section 242(1) of the Act has been broadened to the extent it could include waste management.

Also, minimizing the number of regulatory agencies governing oil and gas industry waste will reduce both industry's and government's administrative burdens.

ISSUE 23: Classification of Upstream Petroleum Industry Wastes

The CPA believes oilfield wastes that are in high volumes and have low environmental risk could be reasonably exempted from the Hazardous Waste Regulation under Section 3(d) (lines 126-129).

The CPA requests a workshop be held with appropriate stakeholders to review this issue.

The types of wastes that are classified as hazardous under this regulation will influence how quickly industry will be able to comply with the Hazardous Waste Regulation. Whichever wastes are governed by the regulation, the CPA requests the requirements be phased in over three years. This will minimize economic hardship and give industry and government time to establish the infrastructure necessary to adapt to the regulatory requirements. During the phase-in period, wastes could be stored appropriately.

ISSUE 24: Necessity for Waste Characterization Protocols

The CPA believes this regulation should establish protocols for characterizing wastes because current laboratory testing of certain wastes does not provide accurate waste evaluations. It is important to characterize wastes properly to avoid mismanagement of wastes and possible resultant environmental harm.

An appropriate agency, such as the Alberta Special Waste Management Corporation, should be assigned responsibility for jointly developing the protocols with the upstream petroleum industry.

The CPA's waste management task force has gathered information that could be useful in developing these waste characterization protocols.

The CPA also requests the analytical protocols be prepared as guidelines and referenced in the regulation rather than included in the regulation. This will allow improvement in analytical methods to be easily incorporated.

Waste Control Regulation

The Waste Control Regulation will be a modification of the current Litter Act and its regulations. The regulation will include:

- *enforcement orders (previously called anti-litter orders) for the control of waste on highways, water, ice, public land and municipally owned land*
- *environmental protection orders for the cleanup of unsightly property (previously called cleanup orders)*

The CPA does not have any key issues to raise on the Waste Control Regulation.

Pesticide Sales, Handling, Use and Application Regulation

The Pesticide Sales, Handling, Use and Application Regulation will be a modification of the:

- *Agricultural Chemicals Act*
- *Pesticide Applicator Licensing Regulation*
- *Pesticide Sales, Use and Handling Regulation*

The new regulations will contain revised requirements for:

- *pesticide classification*
- *security*
- *aerial application*
- *permits*
- *storage*
- *fumigants and baits*
- *applicator certificates*
- *vendor licences*
- *pesticide disposal and sales*
- *business licences*

ISSUE 25: Exemption of Some Pesticide Applicators

Section 14(a) (lines 354-357) of the Pesticide Sales, Use, Handling and Application Regulation states the following people are exempt from Section 13 (lines 345-347), which requires applicators to have certificates for applying pesticides:

- a person who applies pesticides on private land
- a person who applies pesticides on property owned, occupied or controlled by him or his employer
- a commercial agriculturalist leasing land owned by the Crown in the right of Alberta for grazing or agricultural purposes

The CPA believes the regulation is significantly weakened by these exemptions from the requirement for applicator certificates. The environment should be protected from improper pesticide application wherever pesticides are applied. All pesticide applicators should, at the very least, have training and preferably applicator certificates.

Enforcement Policy

The Enforcement Policy will ensure timely and consistent enforcement of all regulations under the Act. It will be based on the 1988 report by the Review Panel on Environmental Law Enforcement to the Minister of Environment entitled "An Action Plan for Environmental Law Enforcement in Alberta".

Alberta Environment has not yet completed the Enforcement Policy but will be releasing it soon.

ISSUE 26: Input into Enforcement Policy

The CPA requests the chance to review and provide input into the government's Enforcement Policy when it is available.

In its review, the CPA will assess the policy's:

- firmness and fairness
- flexibility in accommodating industry operations as industry adjusts to new requirements
- recognition of alternative methods of encouraging compliance

The policy should recognize and encourage all methods of achieving compliance, including:

- issuance of warning letters
- dissemination of information on problem areas
- government participation in designing methods to avoid problems
- encouragement of self-policing methods, such as environmental audits

To encourage the use of environmental audits, audit results must not be allowed to be used as evidence in any prosecution.

The CPA believes enforcement measures should be the last resort in obtaining compliance.

The CPA looks forward to reviewing the government's Enforcement Policy. This policy will play an extremely significant role in the success of the province's new environmental legislation.

This part of the document presents additional CPA concerns about the regulations and includes recommendations for revisions. These concerns are presented separately from Key Issues because of their level of detail.

Concerns are presented by regulation, in the same order as in the government's review document. For each section of the regulation being addressed, a summary of the section is given in italics, followed by the CPA's comments. For more detail and accurate legal wording, refer to the *Draft Regulations Under the Alberta Environmental Protection and Enhancement Act.*

Public Disclosure Regulation

Section 33(2) and 33(3) of the Act as it relates to the Public Disclosure Regulation

Under Section 33(2) of the Act where information referred to in subsection (1) is provided to the Government and relates to a trade secret, process or technique that the person submitting the information keeps confidential, the person submitting the information may make a request in writing to the Board that the information be kept confidential and not be disclosed.

Section 33(3) states where the Board receives a request for confidentiality under subsection (2) it shall

(a) approve the request and order that the information be kept confidential and not be disclosed where it considers that the request is well founded, or

(b) refuse the request where it considers that the request is not well founded

The CPA questions the meaning of "well founded" in the Act and recommends the government's criteria for assessing requests for confidentiality be defined in the regulations.

Section 2 (Lines 22-23)

Section 2 (lines 22-23) introduces several requirements of the Department upon receipt of a request for a document issued by the Department pursuant to Section 33(1)(c) - (l) of the Act.

The CPA requests a provision be added for the Department to provide the approval holder with the name of the person making the request for a document.

Environmental Assessment Regulation

Section 3 (Lines 31-54)

Section 3 (lines 31-54) of the Environmental Assessment Regulation describes the Director's notification procedures when screening a proposed report for the need for an EIA.

The CPA requests this section clearly define the Director's screening criteria for determining the need for EIAs.

Section 3(3)(c) (Line 47-49)

Section 3(3)(c) (line 47-49) states "directly affected persons" may file written statements of concern with the Director within 30 days of publication of notice of a screening.

Before assessing a statement of concern, the CPA requests the Director examine the legitimacy of a person's claim of being directly affected and report to all parties.

Section 4(b) (Lines 66-67)

Section 4(b) (lines 66-67) requires the person filing the statement of concern to provide a general statement of how he or she is directly affected by a proposed activity.

The CPA requests Section 4(b) (lines 66-67) require a person filing a statement of concern to provide a general statement of how he or she is "directly and adversely affected" by a proposed development.

Concerns About Section 55(b) and 55(f) of the Act, as they relate to the Environmental Assessment Regulation

Although the Act enables the Minister to make regulations respecting the EIA process (Section 55[b]) and the form and content of EIA reports (Section 55[f]), neither it nor the Environmental Assessment Regulation provide regulations on acceptable EIA methods. The CPA offers to work with the government in developing scientifically sound methods.

Section 7 (Lines 143-167)

In this section, procedures for notifying the public of the proposed terms of reference for an EIA are outlined.

As stated in the CPA's response to the Act, this section, or a new section, should contain some direction on the requirements for terms of reference. The section should also allow for the government to contact the ERCB and the public in the preparation of terms of reference.

Class of Activities Regulation

Section 1(i)(ii) (Lines 39-47)

This section presents a definition for on-site facility. The definition includes "facilities owned by the same person, which are located on non-contiguous properties and which deal solely with waste produced on one or more of the non-contiguous properties."

The CPA commends this definition because it will facilitate effective oilfield waste management.

Many oil and gas companies have non-contiguous properties.

Section 3 (Lines 123-422)

Section 3 (lines 123-422) provides many definitions for the Class of Activities Regulation.

A definition for diluted bitumen should be added under Class B Activities. The definition should be consistent with that in the Oil and Gas Conservation Act.

Section 3(ii) (Lines 260-261)

Section 3(ii) (lines 260-261) states "oil refinery" means a plant for manufacturing hydrocarbon products from oil, heavy oil, crude bitumen or synthetic crude oil.

The term "crude bitumen" should be changed to read "crude or diluted bitumen".

Section 3(eee) (Lines 372-376)

Section 3(eee) (lines 372-376) states "synthetic crude oil" means a mixture, mainly of pentanes and heavier hydrocarbons, that may contain sulphur compounds, that is derived from crude bitumen and that is liquid at the conditions under which its volume is measured or estimated, and includes all other hydrocarbon mixtures so derived.

The term crude bitumen should be changed to read "crude bitumen or heavy oil."

Section 4 (Lines 427-517)

Section 4 (lines 427-517) refers to a number of activities requiring approvals. Coal processing is included within the oil and gas category.

The CPA recommends the oil and gas category be renamed "oil, gas and coal".

Section 8 (Lines 748-836)

Section 8 (lines 748-836) requires an approval be obtained for operation of a hydrostatic testing service.

The CPA questions the need for public approval of hydrostatic testing operations.

Also, the CPA is concerned this approval will duplicate the ERCB's current requirement for some operators to hydrostatically test operating pipelines. Duplication is unnecessary and should be avoided.

Section 9(c) (Lines 854-855)

Section 9(c) (lines 854-855) in this regulation, and Section 1(f) (lines 34-35) in the Potable Water Regulation, both state "ground water" means water at a depth of more than 15 metres beneath the surface of the ground. Section 1(d) (line 21) of the Release Reporting Regulation states "ground water" means all water under the surface of the ground.

The term "ground water" needs to be made consistent wherever it appears in the regulations.

Section 12(a) (Lines 968-969)

Section 12(a) (lines 968-969) states an applicant shall apply for and obtain approval from the Director in accordance with the Pesticide Sales, Handling, Use and Application Regulation, Section 8(m) to (q).

Section 8(m) to (q) of the Pesticide Sales, Handling, Use and Application Regulation, referred to in Section 12, Class E Activities, does not exist in the draft regulations.

Approvals Procedure Regulation

Section 1 (Lines 10-47)

Section 1 (lines 10-47) provides a number of definitions used in the Approvals Procedure Regulation.

The CPA requests a definition of uncontaminated water be added to Section 1 (lines 10-47).

Section 1(e) (Lines 36-37)

Section 1 (lines 36-37) of the Approvals Procedure Regulation states "Director" means the Director appointed pursuant to Ministerial Order for each class of activity.

This "one-window" assignment of responsibility by class of activity is intended to make the approval system more efficient and easier for individuals or companies seeking approvals. The CPA requests the regulations clarify how the one-window approach to obtaining approvals can be used efficiently when projects are governed by more than one activity class. The CPA also requests the regulation define the ERCB's role in approvals. In Key Issue 1 in this submission, the CPA strongly recommended the ERCB function as the one-window agency for the upstream petroleum industry.

Section 3 (Lines 63-65)

Section 3 (Lines 63-65) states no person shall commence or continue construction, operation or reclamation of an activity designated as requiring an approval in the Class of Activities Regulation unless an approval has been issued by the Director.

Neither the Act nor the Approvals Procedure Regulation defines time limits for the government to issue approvals or renewals. Without time limits, the CPA is concerned there may be delays in approvals that could hinder operations, and lags in renewals that could result in shutdowns.

The CPA recommends the regulation be amended to:

- include time limits to assist industry with project planning
- demonstrate how industry can continue to operate while a renewal is being considered without violating the regulations

Section 4(2) (Lines 75-107)

Section *4(2) (lines 75-107) states an application for an approval shall be made to the Director and shall be made describing a number of requirements in Activity Classes A through E.*

The CPA is concerned the current requirements for public reviews and extensive application information, and Alberta Environment's increased approvals workload may seriously delay many developments. For example, in 1990, 20 gas plant applications were made to the ERCB; of these, 9 were referred to Alberta Environment and only 7 were regulated by Alberta Environment. Under the proposed regulation Alberta Environment would have had to process almost three times as many applications. In many projects, scheduling is vital; a delay in one activity can hold up the entire project and add significant costs, possibly enough to make the project uneconomic.

To reduce delays, the CPA recommends not subjecting approval applications to public review where applications have already involved the public through pre-approval consultation.

The CPA also requests applications only cover changes made since the previous application and information required be directly related to the approval application.

Section 4(2)(c)(v) (Line 159) and Section 4(2)(c)(vi) (Line 160)

Section 4(2)(c)(v) (line 159) states an application for an approval shall be made to the Director and accompanied by a conceptual conservation and reclamation plan. Section 4(2)(c)(vi) (line 160) states the application should contain a detailed conservation and reclamation plan.

The CPA believes these requirements are redundant and requests removal of the requirement for a conceptual conservation and reclamation plan.

Section 4(3) (Lines 212-214)

Section 4(3) (lines 212-214) states the Director may waive any of the information requirements in subsection 2, where, in the Director's opinion, the requirements are not applicable to an application or it is otherwise appropriate to do so.

The CPA supports Alberta Environment's inclusion of this feature because it will provide regulators more flexibility in their decision making.

Section 9(1) (Lines 331-334)

Section 9(1) (lines 331-334) states where an application is referred to a referral committee for an activity under Class C of the Class of Activities Regulation, the committee shall recommend to the Director within 90 days of receiving the complete application that the application be granted or refused.

The CPA believes this 90-day period will complicate the planning process and adversely affect some types of operations. Review periods should be shorter than 90 days and based on the degree of impacts expected from the project.

Environmental Appeal Board Regulation

Section 1(c) (Lines 17-18)

Section 1(c) (Lines 17-18) of the Environmental Appeal Board Regulation states "Board" means the Environmental Appeal Board established under Section 82 of the Act, which states:

(1) There is hereby established the Environmental Appeal Board consisting of persons appointed by the Lieutenant Governor in Council.

(2) The Board shall hear appeals as provided for in this Part.

(3) Where a panel is convened under Section 85(1), the panel thereafter has all the powers of the Board and is subject to all the same duties the Board is subject to, and a reference to the Board shall be read as a reference to the panel.

The CPA recommends specifications for Board size and composition, and the criteria for selecting Board members be added to the regulation. The CPA recommends a Board size restriction of 3 to 5 persons. The CPA also recommends Board members be selected by the Director, not the Minister.

Section 39 (Lines 476-484)

Section 39 (lines 476-484) states an award of final costs in any proceeding before the Board shall be paid in whole or part
(a) by the approval holder, where the approval holder is a party to the appeal

(b) by any party or parties to the appeal that the Board may direct, in such terms and conditions as the Board considers appropriate, or

(c) by the Board

It is the CPA's opinion parties objecting to approvals should be

required to pay hearing costs for those judgements in favour of the defendant. Interim costs to fund the defense of approval holders should also be made available.

Final rulings by the Board or the Minister on objections should require the losing party, whether complainant or defendant, to return to the Board, at its discretion, all interim costs awarded.

Section 44 (Lines 531-532)

Section 44 states that unless the Board directs otherwise, an approval holder is not eligible for an award of interim or final costs.

This section should be omitted because Section 39 discusses the allocation of hearing costs among all parties, including approval holders.

Substance Release (Maximum Levels Air Emissions) Regulation

Section 7(2) (Lines 193-204)

Section 7(2) (lines 193-204) states that notwithstanding subsection (1), the maximum visible emissions permitted to be emitted from

(a) start-up or shut-down of

(i) plant processes, or

(ii) waste burners that are used only for the purposes of burning wood waste;

(b) soot blowing or process purging;

(c) rapping of electrostatic precipitators;

may exceed an opacity of 40% for an aggregate period of not more than six minutes in any period of 60 consecutive minutes.

The CPA requests an exemption from these opacity requirements be provided for start-up and shut-down conditions, and for undesirable conditions created by events outside the operator's control, e.g., power failures.

Also, the CPA requires clarification regarding offenses under this section. In existing legislation, "black smoke violations" are reportable incidents that do not result in prosecution. Under the proposed legislation, the same events will be summary convictions. Consequently, the law of evidence must be considered. The CPA requests approval holders be able to present evidence in support of their defence when regulators have determined they have committed offenses.

Section 23 (Lines 833-836)

Section 23 (lines 833-836) states any person who fails to comply with or who contravenes any provision of sections 2, 3, 4, 5, 7, 9(2), 10(2), 10(3), 10(4), 11(2), 12(2), 14(5)-(6), 15, 16, 20, 21 or 22 is guilty of an offence and liable on summary conviction to a fine of not more than __ for each day that the contravention continues.

The CPA believes this section should reference the fine structure in Section 215 of the Act.

Substance Release (Stormwater Drainage and Wastewater Systems) Regulation

Section 5(1) (Lines 153-167)

Section 5(1) (lines 153-167) states no person shall use or dispose of or allow the use or disposal of any substance in or into any storm drainage or wastewater system that may cause an adverse effect.

The CPA suggests the government regulate water emissions in the same way as proposed for air emissions in the Clean Air Strategy for Alberta. Under this approach, water quality impacts would be defined using scientifically defensible techniques, and

then priorities would be set for the impacts. Water quality targets would be set on a basin or sub-basin basis.

Section 6 (Lines 178-180)

Section 6 (lines 178-180) states every wastewater system and storm drainage system shall be designed, operated and maintained to achieve, under all normal and foreseeable operating conditions, all substance release requirements specified in this Regulation or an approval.

Section 5(1) (lines 153-167), which deals with offenses, does not recognize the "normal and foreseeable operating conditions" described above in Section 6 (lines 178-180). Therefore, the operating standard is lower than the enforcement standard, and operators become potentially liable for conditions they cannot foresee. The CPA requests the fairness of this situation be examined.

Section 18 (Lines 323-325)

Section 18 (lines 323-325) states any person who fails to comply with or who contravenes any provision of sections 3, 5(1), 8(4), 10, 11 or 12 is guilty of an offence and liable on summary conviction to a fine of not more than __ for each day that the contravention continues.

The CPA believes this section should reference the fine structure in Section 215 of the Act.

Substance Release (Industrial Plants) Regulation

Section 5 (Lines 88-90)

Section 5 (lines 88-90) states any person who fails to comply with or who contravenes any provision of Section 2(1) or 3(4) is guilty of an offence and liable on summary conviction to a fine of not more

than __ for each day that the contravention continues.

The CPA believes this Section should reference the fine structure in Section 215 of the Act.

Release Reporting Regulation

Section 2 (Lines 28-29)

Section 2 (lines 28-29) states Sections 105 to 106 of this regulation and the Act apply to all releases unless specifically exempt. Section 105 of the Act states persons should report a release as soon as they know or "ought to know" of the release.

The CPA recommends government remove all reference to "ought to know" in both the Act and its Release Reporting Regulation. When a person ought to know of a release will be determined by due diligence, and only at a formal hearing.

Section 4(1)(a) (Lines 55-56)

Section 4(1)(a) (lines 55-56) states Sections 105 to 106 of the Act, and this regulation apply to releases of

(1) substances falling within the Class and Division set out in Column I of Table I to Part IX of the Transportation of Dangerous Goods Regulations (SOR 85-77) made under the Transportation of Dangerous Goods Act (Canada)

(a) in any quantity, where such substance is released to a watercourse, groundwater or surface water

The CPA believes reporting exceptionally small releases is not realistic or operationally possible, and urges the government to define more reasonable limits for release sizes.

Spill sizes for oil or salt water should match those in the Oil and Gas Conservation Act. In this Act, a spill must be reported when it:

- occurs or extends off the lease or facility site, or
- exceeds two cubic metres

As discussed in Issue 1 in the Key Issues section of this submission, the CPA requests the oil and gas industry report its releases to the ERCB.

Section 4(5)

Section 4(5) states releases must be reported of any substance which, due to factors including volume, decomposition, byproducts, cumulative effects or release location, may cause an adverse effect.

The CPA sees this reporting requirement as very difficult, if not impossible, to meet. To meet this requirement, all operations staff would have to know the environmental impacts of every substance they work with, in every chemical form, in every possible situation and under all environmental conditions. The requirement for knowledge appears excessive.

Section 6 (Lines 101-106)

Section 6 (lines 101-106) states the owner of a substance and the person having control of the substance released to the environment shall report to the Director.

This dual reporting seems to be a duplication of effort and is confusing. The CPA believes the section should be reworded to state that "either the owner of a substance or the person having control of the substance released to the environment" should report to the Director.

Section 7 (Lines 113-141)

Section 7 (lines 113-141) requires a written report of the release be provided to the Director within seven days of the verbal report.

The section specifies the information required in the written report.

The CPA commends the government in extending the time for report preparation from the 72 hours in current legislation to the 7 days in the proposed regulation.

Section 8 (Lines 148-150)

Section 8 (lines 148-150) states any person who fails to comply with or who contravenes any provision of Section 7 (lines 113-141) is guilty of an offence and liable on summary conviction to a fine of not more than __ for each day that the contravention continues.

The CPA believes this section should reference the fine structure in Section 215 of the Act.

The CPA is also concerned about immediate reporting of releases. These reports (which are often verbal) should not be used in prosecutions. While acceptable when first reported, as evidence is gathered, this information may be determined to be inaccurate. Clearly, this puts industry at a disadvantage. Also, if companies fear prosecution, they could delay reporting until they are completely sure all reporting data is accurate. The CPA requests Alberta Environment amend this regulation to eliminate the chance of unfair liability.

Conservation and Reclamation Regulation

Section 1(i) (Lines 60-63)

Section 1(i) (lines 60-63) defines "equivalent land capability" as the ability of the land to support various land uses after reclamation being similar to the ability that existed prior to any activity being

conducted on the land, but that the ability to support individual land uses will not necessarily be identical after reclamation.

The CPA requests this definition, and any other applicable sections of the regulations, also address reclaiming sites to aquatic habitat. This regulation discusses only terrestrial habitat.

Further, the regulations should also address enhancing land use capability for various land uses through land reclamation.

Section 1(q) (Lines 120-122)

Section 1(q) (lines 120-122) states "specified land" means land that is situated in Alberta and is being or has been used for, or in connection with, or is being held or has been held incidental to, or in connection with various uses specified in Sections 1(q)(i) to (viii).

The CPA believes the activities specified in Sections *1(q)(i) to (viii)* should be expanded to address all types of surface disturbances. This would ensure the regulation is in keeping with its intent of environmental protection.

Section 2(2) (Line 162)

Section 2(2) (line 162) states the standards and criteria for the conservation, maintenance and reclamation of specified lands may be established by the Chair through guidelines.

The CPA strongly requests that this Conservation and Reclamation Regulation contain the reclamation "standards and criteria" rather than leaving them to guidelines. This concern is discussed in detail in Key Issue 5.

Section 13(2) (Lines 320-321)

Section 13(2) (lines 320-321) states that in conducting a reclamation inquiry, conservation and reclamation officers are not bound by the rules of law concerning evidence.

This statement requires clarification because it does not explain what rules officers are bound to follow, and grants officers a great deal of power. Although reclamation officers are not bound by the rules of law governing evidence, the CPA suggests the regulation states what standards officers must comply with when conducting investigations.

Section 14(1) (Lines 326-332)

Section 14(1) (lines 326-332) states at least 5 days before a reclamation inquiry, a conservation and reclamation officer shall give notice to the owner and the operator of the date on which and place at which the inquiry is to be held.

If the inquiry actually is an investigation, the CPA does not believe five days is sufficient time for companies to prepare their cases. The CPA requires clarification of the term "inquiry".

Section 18(h) (Lines 429-430)

Section 18(h) (lines 429-430) states an application for a reclamation certificate shall be made to the Chair and shall include, where applicable, documentation of any surface lease or right of entry order for the specified land.

The CPA questions the necessity of this requirement. It is not closely related to reclamation and the CPA recommends it be removed from the regulation.

Section 18(i) (Lines 432-433)

Section 18(i) (lines 432-433) states an application for a reclamation certificate shall be made to the Chair and shall include, where applicable, a declaration of any substances that may cause, are causing or have caused a significant adverse effect that is present on the specified land.

The CPA requests the regulation define "adverse effect" or refer to the definition for this term in the Act.

Section 18(j) (Lines 435-436)

Section 18(j) (lines 435-436) states an application for a reclamation certificate shall be made to the Chair and shall include where applicable documentation of any information required by guidelines or by request of the Chair.

The CPA is concerned "any information requested by the Chair" could require disclosure of information of a proprietary or private nature between the operator and the landowner. The CPA requests the section be reworded to protect industry from these types of requests.

Section 19(2) (Lines 447-456)

Section 19(2) (lines 447-456) states where a conservation and reclamation officer is of the opinion that the specified land in respect of which the inquiry was held has not been reclaimed in accordance with Section 2 of this Regulation, the conservation and reclamation officer shall

(i) issue an environmental protection order in accordance with Section 15, and

(ii) specify an additional waiting period to allow a further evaluation of reclamation

In the CPA's experience, considerable time is required for an inspector to respond to an application for a reclamation certificate. Should an inspector miss the growing season, the operator must pay an extra year of compensation, rent or bonus to the landowner holding the lease. The CPA recommends the regulation specify a 30-day period for a conservation and reclamation officer to respond to eliminate unnecessary delays and expenses, and to expedite return of security.

Sections 20 (Lines 464-467) and Section 21 (Lines 472-475)

Section 20 (lines 464-467) states the operator of any activity on specified land that is being used for or in connection with activities listed in Sections 1(q)(i)-(v), (vii) and (viii), which includes the construction, operation and reclamation of a mine or pit, shall be responsible for any further reclamation of the specified land that may be required by the Chair for a period of up to 5 years from the date of issue of the reclamation certificate.

Section 21 (lines 472-475) states the operator of any activity on specified land that is being used for or in connection with activities listed in Section 1(q)(vi), which includes the construction, operation and reclamation of a plant, shall be responsible for any further reclamation of the specified land that may be required by the Chair for a period of up to 25 years from the date of issue of the reclamation certificate.

In oilsands operations, a plant (with a 25-year reclamation liability) is situated in the middle of a mine (with a 5-year reclamation liability). The CPA requests the regulations clarify what reclamation liabilities would apply in oilsand operations, and in similar situations, where operations include activities with different liability periods.

Committees Regulation

Section 3(2) (Lines 64-67)

Section 3(2) (lines 64-67) states upon receipt of the information prescribed in subsection (1) the Crown Mineral Disposition Review Committee shall review the environmental effect of the proposed disposition on the surface of the lands described and the surface of any adjacent land.

The CPA requests this regulation clarify the criteria for the review process for land disposition proposals.

Section 10(2) (Lines 177-189)

Section 10(2) (lines 177-189) states a committee may from time to time request one or more employees of the government or of government agencies who have special technical knowledge or expertise to

(a) sit with the committee for any review, or

(b) to inquire into any matter and report to the committee

The CPA believes this section should be expanded to allow the committees to request input from experts outside government.

Conservation and Reclamation Security Regulation

Section 2 (Lines 47-53)

Section 2 (lines 47-53) states the Director shall require that an applicant for an approval or an approval holder provide security to the Government.

The regulations should specify how the security will be managed. The CPA also requests the government tie the security to a specific project, not to establish a general government fund.

Section 3 (Lines 58-64)

Section 3 (lines 58-64) states an applicant for an approval or an approval holder shall provide security to the Government

(a) in the case of an applicant, before the issue of an approval, or

(b) in the case of an approval holder, within 30 days of the demand by the Director

The CPA asks this regulation describe a reasonable basis for such a demand. Further, there is no direction provided on what happens if the demand is appealed, and who pays appeals costs. The CPA suggests that wording be added to this section as follows:

"A Director's demand for the provision of security will be subject to appeal. Provision of security will be required if the appeal is unsuccessful."

Section 6 (Lines 88-93)

Section 6 (lines 88-93) states the Director may exempt an applicant for an approval, an approval holder, or an operator from providing security after considering

(a) the nature, complexity and extent of the activity on the specified land, and

(b) the estimated cost of reclamation of the specified land

The CPA requests exemptions specify dollar values to ensure all operations of a similar nature are treated equally. The regulation should also specify how these costs will be determined.

Also, the regulations should clarify whether the approval holder or Director will supply estimates.

Section 7 (Lines 98-132)

Section 7 (lines 98-132) states any security demanded by the Director shall be payable to the Provincial Treasurer, and may be in the form of, but not limited to, a number of different methods.

This section is unclear because it does not indicate who chooses the form of security required. The CPA recommends this section be worded more clearly, and requests the approval holder choose the type of security provided.

Section 8 (Lines 139-156)

Section 8 (lines 139-156) states the amount of security required by the Director from an applicant for an approval, an approval holder or an operator shall be determined by the nature, complexity and extent of the activity on specified land.

The CPA requires clarification as to who will specify the amount of security and how the government will verify the accuracy of estimates.

Section 9 (Lines 161-185)

Section 9 (lines 161-185) states the Director may adjust the security provided by an applicant, approval holder or operator in a number of instances.

The CPA believes this section of the regulation gives the Director the ability to demand changes to the amount and type of security, without having to justify the requested changes. The CPA requests this section be reworded to allow the Director to adjust the amount of security only, not the type. The section should also define the allowable circumstances for any adjustment to the amount of security.

The CPA also recommends the Director be given a specific time limit between the time notice of adjustment is given, and the deadline for adjustment.

Section 11(3) (Lines 218-223)

Section 11(3) (lines 218-223) states where all or part of any money deposited as security is retained, a conservation and reclamation officer shall issue to the operator or approval holder an environmental protection order regarding reclamation specifying the work which is required to reclaim the land and the operator or approval holder may apply again under subsection (1) for the return of the money after the work required by the environmental protection order has been completed.

The CPA requests a reclamation certificate be issued and any reclamation security be returned within a specified time limit after reclamation has been satisfactorily completed.

Section 15(3) (Lines 288-289)

Section 15(3) (lines 288-289) states the Minister may collect the forfeited amount notwithstanding lack of notice to the operator or approval holder.

Section 15(3) (lines 288-289) appears to contradict Section 15(2)(a) (lines 277-279), where the Minister shall send a notice of the decision to forfeit all or part of the security. The CPA questions how the Minister can proceed despite "lack of notice".

This may be intended to handle orphan sites, but if so, this should be clarified in the regulations.

Section 16(1) and Section 16(2) (Lines 293-298)

Section 16(1) and Section 16(2) (lines 293-298) states the amount, if any, by which the security forfeited exceeds the money so paid by the Government, shall be returned to the operator or approval holder, as the case may be. The operator or approval holder shall be liable for the amount, if any, by which the security so forfeited is insufficient to pay for the full cost of reclamation.

The CPA suggests a time frame for the prompt return of security be included in this regulation. There are presently no procedures in place for companies to hasten return of security.

Water Well Drilling, Construction, Maintenance and Reclamation Regulation

Section 6 (Lines 129-130)

Section 6 (lines 129-130) states no license holder shall drill or reclaim a well except in accordance with this Regulation.

The CPA recommends that, instead of referring to "drill or reclaim a well", the regulation state "complete, test or abandon wells, and reclaim wellsites".

Section 8(5) (Lines 168-169)

Section 8(5) (lines 168-169) states a Class E license is for the drilling of wells to a depth not less than 450 metres to obtain non-potable water for non-domestic purposes.

The CPA requires clarification as to how a Class E license is different from a Class A licence.

It also appears drillers on the large oil and gas drilling rigs will need an additional license to drill deep source-water wells.

If this interpretation is correct, the CPA questions the government's decision to require licensing because the drillers are already licensed under the ERCB. Extra licensing will add time and costs to both industry and government operations.

Section 11(2)(b) (Lines 204-206)

Section 11(2)(b) (lines 204-206) states the Director may issue or refuse to issue a license when the Director is of the opinion that

(a) the past conduct of the applicant or, where the applicant is a corporation, of the officers or directors offers ground for belief that the business of drilling or reclaiming wells will not be conducted in accordance with the Act and this Regulation, or

(b) the applicant or, where the applicant is a corporation, the officers or directors are not qualified to engage in the business of drilling or reclaiming wells

The CPA recommends that, instead of referring to "drilling or reclaiming wells", these sections state "completing, testing or abandoning wells, and reclaiming wellsites".

Section 35(a) and Section 35(b) (Lines 476-481)

Section 35(a) and Section 35(b) (lines 476-481) state where the presence of non-potable water or gas is encountered in the drilling of a well the license holder shall

(a) immediately notify the owner that non-potable water or gas has been encountered

(b) immediately seal off or cause to be sealed off the non-potable water or gas in a manner so as to prevent an adverse

effect on the quality of other water and to protect the environment

This section should be retitled "Reporting Gas Encountered" from "Reporting Non-Potable Water or Gas", and should have the term non-potable water removed. Potable water is defined in the Act as water supplied to a waterworks, which implies the water has undergone some form of treatment. Therefore, non-potable water would be the only kind of water encountered when drilling a well.

Section 37 (Lines 526-527)

Section 37 (lines 526-527) states the site of a proposed well shall be separated from the listed sources of substances by at least the distance specified in Table I.

The CPA recommends adding to Table I that the site of a proposed well should be 50 m from:

- livestock rearing or feeding corrals
- underground storage tanks

Livestock rearing or feeding corrals are widely acknowledged sources of well contamination in the agricultural sector. To exclude these sources would be overlooking a key source of groundwater contamination.

Section 38(2)(f) (Lines 560-577)

Section 38(2)(f) (lines 560-577) states where a well is to be used for a licensable purpose under the Water Resources Act, a license holder shall ensure the well is constructed with open hole, slotted or screened intervals that do not exceed 25 feet where distinct water producing units are present.

The imperial measure of 25 feet should be changed to read 8 metres.

Section 43 (Lines 642-662)

Section 43 (lines 642-662) is currently entitled "Minimum Specifications (Casing)".

For clarity, this section should be retitled "Minimum Specifications (Casing Thickness)".

Section 47(1) (Lines 751-760)

Section 47(1) (lines 751-760) states the license holder shall immediately equip a flowing well with a variable flow control device to completely control the flow of water from the well.

The CPA believes the term "license holder" should be changed to well driller. A licence holder may not be the driller and a driller would be more likely to install a flow control device.

This statement does not clearly indicate when the license holder must equip a flowing well with a flow control device. The regulation states a flow control device must be installed immediately; however, it should state the device must be installed immediately after a specific action or situation.

Section 50 (Lines 782-784)

Section 50 (lines 782-784) states the license holder shall develop a well in a manner so as to ensure no damage could be incurred to the pumping system, plumbing or fixtures due to excessive sediment content in the water.

This information appears to be advice rather than a regulation. For this reason, the CPA requests it be removed from the regulations and presented in guidelines.

Section 54(4)(a) (Lines 860-878)

Section 54(4)(a) (lines 860-878) states where a test is conducted, the static water level in the well shall be measured immediately before commencement of pumping and the water level during pumping shall be measured every 10 minutes thereafter.

The requirement for measuring the water level entry ten minutes after pumping commences is not consistent with the Water Well Driller's Report Form. The CPA recommends timing indicated on the form be followed because it is technically more relevant.

Section 60 (Lines 1031-1033)

Section 60 (lines 1031-1033) states where non-potable water enters a well, the well owner shall seal off the non-potable water to prevent an adverse effect on the quality of other water and the environment.

As indicated in the CPA's comments on Section 35 (lines 473-487) of this regulation, the term "non-potable water" should be removed from this section because it is not necessary. Potable water is defined in the Act as water supplied to a waterworks, implying the water has undergone some form of treatment. Only non-potable water would be encountered in a well.

Potable Water Regulation

Section 1(f) (Lines 34-35)

Section 1(f) (lines 34-35) of this regulation states "ground water" means water at a depth of more than 15 metres beneath the surface of the ground.

In Section 1(d) (line 21) of the Release Reporting Regulation, "ground water" is defined as all water under the surface of the ground. Clarification of the term "ground water" is required wherever it appears in the regulations.

Section 1(g) (Lines 37-43)

Section 1(g) (lines 37-43) defines "licence holder" as a holder of any of the classes of licence referred to in this Regulation.

For clarity, this section should be cross-referenced to Sections 12 (lines 260-261); Section 13 (lines 266-270); and Section 15 (lines 306-317).

Section 17 (Lines 331-332)

Section 17 (lines 331-332) states any failure or shut-down of equipment used for disinfection shall be reported immediately to the Director.

The CPA believes the requirement in Section 17 (lines 331-332) is overly stringent; however, the CPA does support immediate reporting of outages which may jeopardize chlorine residual limits in treated water supplies. Immediate reporting is necessary only in emergencies where the quality of water for consumer use will be adversely affected. At some facilities, there is backup equipment or a treated water reservoir capable of maintaining supply during the outage. The CPA requests such facilities be exempt from the immediate reporting requirement specified by this regulation.

Hazardous Recyclable Regulation

Section 1 (Lines 12-36)

Section 1 (lines 12-36) contains numerous definitions that apply to the Hazardous Recyclable Regulation.

The CPA recommends this section include a definition for facility. Industry should know which operations would constitute a facility because facility operators have obligations under the Act and this regulation.

The CPA also recommends the term "hazardous recyclable facility" be replaced with the wording "hazardous waste recycling facility". This would remove ambiguity and would follow common industry nomenclature. It presently sounds as though the facility itself is both hazardous and recyclable.

Section 3 (Lines 49-52)

Section 3 (lines 49-52) states this regulation does not apply to any hazardous recyclables produced by a generator in an amount less than 5 kilograms if a solid, or 5 litres if a liquid, per month, but only if the quantity accumulated does not exceed 5 kilograms or 5 litres at any one time.

The quantities stated in this section may be too small for oil and gas industry operations. For example, samples taken during routine work can exceed these limits. For this reason, the CPA recommends the regulated quantities be increased. The CPA requests this topic be discussed at the waste workshop discussed in Issue 2 in the Key Issues section of this submission.

Section 4(b) (Lines 63-65)

Section 4(b) (lines 63-65) states a person who stores a hazardous recyclable shall, in a manner acceptable to the Director, store it in an amount and in a manner such that it will not cause an adverse effect so that:

(b) at least secondary containment is provided for liquid hazardous recyclables

Secondary containment is not defined in the Act or this regulation and its use in Section 4(b), (f)(v) and (f)(vi) adds uncertainty and confusion. This term should be much more fully explained in the regulations.

Section 4(e) (Line 79) and Section 4(f)(iii) (Line 87)

Section 4(e) (line 79) and Section 4(f)(iii) (line 87) states a person who stores a hazardous recyclable shall, in a manner acceptable to the Director, store it in an amount and in a manner such that it will not cause an adverse effect so that routine inspections of the hazardous recyclable facility are performed.

The CPA suggests the ERCB field staff be responsible for the routine inspections stated in this section.

Section 7 (Lines 177-178)

Section 7 (lines 177-178) states no person shall import hazardous recyclables into Alberta without first obtaining written authorization from the Minister.

When written authorization is received, the regulation should state whether the importer can treat the waste on lease in Alberta.

Section 9(2) (Lines 206-208)

Section 9(2) (lines 206-208) states that hazardous recyclable streams shall be individually classified at their source and shall not be analyzed following mixing or dilution with other hazardous recyclable streams.

The CPA requests the term "hazardous recyclable streams" be defined in this regulation.

Section 10 (Lines 220-223)

Section 10 (lines 220-223) states a person who operates a hazardous recyclable facility shall provide to the Director, if the Director so requires, financial assurance in a form and amount that the Director

considers appropriate to cover the cost of reclamation, inventory removal, closure and 25 years of post-closure care for the facility.

The CPA is in favour of requiring hazardous recyclable facilities to provide financial assurance to cover reclamation costs. Also, the term "financial assurance" should be changed to "security" to be consistent with the other regulations under the Act.

Hazardous Waste Regulation

Section 1 (Lines 9-94)

Section 1 (lines 9-94) contains numerous definitions that apply to the Hazardous Waste Regulation.

The CPA requests this section contain a definition of "inspector" used in Section 3 (lines 109-136).

Section 1(e) (Lines 21-22)

Section 1(e) (lines 21-22) states disposal means the intentional release of untreated hazardous wastes into or on land or into water or air.

The CPA recommends the word "untreated" be dropped from this definition because treated wastes can still be hazardous.

Section 3 (Lines 109-136)

Section 3 (Lines 109-136) states the areas which are exempted from Part 9 of the Act and this regulation.

The CPA requests an additional exemption for unused products sent back to the supplier for resale, repackaging or reprocessing, as the case warrants.

Section 3(b) (Lines 114-119)

Section 3(b) (lines 114-119) states Part 9 of the Act and this Regulation do not apply to wastes generated by the agricultural industry in

(i) the growing and harvesting of crops, or

(ii) the raising of animals, including animal manures returned to the soil as fertilizers.

The CPA acknowledges that most agricultural wastes produced by farmers are not hazardous. However, if these wastes, such as pesticide containers, are improperly handled, they can adversely affect the environment.

Section 16(i) (Lines 350-353)

Section 16(i) (lines 350-353) states when a receiver is to receive hazardous wastes from an off-site source, the receiver shall be given notice for each shipment to the generator of the hazardous wastes that the receiver has the appropriate approvals for and will accept the hazardous wastes that the generator is consigning.

The CPA questions why written notice for every shipment of waste is required. Once the receiver indicates that identified wastes are acceptable, each subsequent consignment should be automatically accepted.

Section 17(a) (Lines 372-382)

Section 17(a) (lines 372-382) states every operator of a hazardous waste management facility shall keep an operating record, in a form acceptable to the Director, of the information that is to be included in the description of each waste received, generated or stored.

The record should also indicate whether the waste was treated or disposed.

Sections 18 (Lines 414-450) and Section 19 (Lines 455-461)

Sections 18 (lines 414-450) and Section 19 (lines 455-461) are under the subheading Storage Facility Standards.

The subheading for these sections should be renamed "Treatment and Storage Facilities". Each occurrence of the word "store" in Section 18 (lines 414-450) should be changed to "store or treat".

Also, the CPA requests the regulation clarify whether these sections apply to waste stored on site for less than 365 days or in quantities less than 10 tonnes.

Section 21 (Lines 497-505)

Section 21 (lines 497-505) states the Director shall not approve the disposal of solid hazardous wastes not otherwise prohibited from disposal in a landfill unless the landfill is provided with at least

(a) a synthetic or clay liner
(b) a leachate collection and removal system, and
(c) a groundwater monitoring system

There are presently only three Class 2 landfills in the province that can accept solid wastes specified in this section. None of them are equipped as required by Section 21(b). The CPA encourages Alberta Environment to promote upgrading of landfills for hazardous wastes to increase the number of available disposal sites. The CPA also requests the oil and gas industry have increased access to the landfills for approved wastes.

Section 24(j) (Lines 538-616)

Section 24(j) (lines 538-616) states landfill disposal of hazardous wastes with a pH less than 2.0 is prohibited.

The CPA recommends an upper pH limit as well as a lower limit be specified for hazardous wastes disposal. The upper pH limit should be at least 11 to 12 to accommodate the oil and gas industry's lime sludges. Even though these sludges have high pHs, they can be handled in an environmentally safe manner.

All limits should be based on sound scientific criteria.

Section 31(1) (Lines 720-722)

Section 31(1) (Lines 720-722) states any person generating hazardous waste is responsible for classifying each waste according to criteria described in this regulation or in a manner approved in writing by the Director.

The CPA requests Section 31(1) (lines 720-722) allow flexibility in analyses used for wastes. The analyses specified should be based on the expected nature of the waste.

Pesticide Sales, Handling, Use and Application Regulation

This regulation makes numerous provisions for environmentally safe use, application, supply, handling, storage, transportation and disposal of pesticides.

The CPA requests this regulation also require applicators to notify adjacent or affected landowners before they apply pesticides.

The CPA supports the elimination of the requirement for permits for applying pesticides in the Green Area. This will make operations more efficient and prevent schedule delays. Permits presently must be applied for long before the proposed treatment date.

The CPA requires clarification if pesticide spraying will be monitored within Green Zone using another method or by individual forest regions.

APPENDIX A: CPA ENVIRONMENTAL CODE OF PRACTICE

Policy Statement

Companies are committed to protecting the environment and to maintaining public health and safety during all phases of operation of the petroleum industry. They do so on behalf of their shareholders and employees, and on behalf of present and future generations of Canadians

Planning

Companies will assess the potential effects of their projects and will integrate protective measures into the planning process to prevent or reduce impacts upon the environment and on public health and safety.

Environment and resource use and public health and safety considerations will join economic, technological and operation evaluations as fundamental components of the planning and decision-making process. This approach will satisfy sound business principles while ensuring that planning, development and operating decisions reflect sensitivity to environmental issues and concerns.

This principle emphasizes the importance of anticipating potential positive and negative effects upon the environment, understanding the interactions and potential consequences between projects and the environment, and the necessity of taking action. To ensure that appropriate action is pursued, environmental planning will be incorporated into all aspects of project design and development.

Anticipating a project's environmental impacts and its associated effects upon public health and safety will enable companies to develop strategies which ensure that impacts and risks are managed. This process will not be limited to new projects nor applied only at the approval stage. Rather, it will be applied to

APPENDIX A: CPA ENVIRONMENTAL CODE OF PRACTICE (cont'd)

all activities from initiation to decommissioning. It represents a long-term commitment to environmental protection and maintenance of public health and safety.

Consultation

Companies will provide relevant information in a timely fashion to the public and to governments with respect to corporate policies and activities and will be responsive and sensitive to community concerns.

The need for and the extent of consultation depends on the locations, size and nature of an operator's activities. Companies are committed to determine the need to consult early in their planning process. The consultative process will include education, information and communication.

Companies will foster the consultation process by creating the mechanisms required for allowing effective communication during the various phases of the project or activity. Responsibility for this process will be assigned to individuals who have decision-making authority. Consultation meetings with governments, communities and the public will be held early in the process to ensure that sufficient time is available to present all the relevant information, listen and respond to concerns and implement corrective action. In some circumstances, member companies will consider funding directly affected parties to provide access to necessary technical expertise and to facilitate their participation in the consultation process.

Consultation does not mean that companies will be required to divulge information which could affect their competitive position, and they must retain the right to manage all aspects of their operations.

APPENDIX A: CPA ENVIRONMENTAL CODE OF PRACTICE (cont'd)

Compliance

Companies will comply with applicable laws and regulations and will adhere to the intent of industry guidelines.

Companies will develop and participate in environmental compliance programs. These programs include environmental audits, inspection and monitoring. Environmental audits (reviews) will be systematically conducted by each company. The results of the audits will be confidential and will be the responsibility of the corporate officers. These audits will be used by the company to assess their compliance with corporate policies, government regulations and industry guidelines, and to identify deficiencies and develop programs for improvement.

Companies will implement inspection and monitoring programs to detect and minimize unanticipated incidents which may result in a state of noncompliance. If such events occur, corrective action will be taken.

Companies will cooperate with government representatives in the development of abatement programs. If a company wilfully or wantonly violates laws and regulations, member companies fully support firm enforcement of the law to protect the environment.

Industry associations will continue to serve as a vehicle for companies to cooperate in developing industry guidelines. The guidelines will periodically be reviewed and updated to ensure that they reflect the best practical technology.

Corrective Action

Environmental damage caused by company activities will be corrected in a timely and efficient manner.

APPENDIX A: CPA ENVIRONMENTAL CODE OF PRACTICE (cont'd)

If oil and gas development activities result in negative impacts on the environment, timely corrective action will be taken. Corrective action is the response to a situation or practice which will or has potential to have a negative effect on public health and safety.

In most cases, corrective action will be based upon established corporate plans and procedures or industry guidelines. The speed with which action is pursued will depend upon the potential risk to human health and safety and the risk of the impact increasing. If the impact is limited and controlled, specific actions may take advantage of operational circumstances, including timing to avoid seasonal constraints.

If environmental protective measures cannot reduce damages to acceptable levels, companies will make every effort to negotiate compensation agreements directly with the affected property owners.

Emergency Response

Companies will implement programs to minimize the consequences of emergency events by ensuring prompt and effective response.

The fundamental assumption underlying the emergency response principle is that all available and practical r( )urces and skills will be brought to bear to bring an emergency under control.

While the probability of an emergency event occurring during oil and gas operations may be low, should it occur its consequences could be severe. Accordingly, prevention of such emergency events will be the industry's first priority.

Companies will develop timely and effective response plans to deal with possible emergencies. The complexity and detail of the emergency response plan will depend upon project specific

APPENDIX A: CPA ENVIRONMENTAL CODE OF PRACTICE (cont'd)

factors, assessment of risk and potential consequences of an emergency incident.

The components of emergency response plans will include: an operational plan which defines decision-making authority, methods of implementation, and available resources; a communication plan which includes internal and external communications segments; and procedures by which the plan can be evaluated.

Research

Companies will encourage and support research relevant to improving industry's ability to protect the environment and maintain public health and safety.

Research refers to any discrete project designed to develop and assess new designs and procedures in response to current or anticipated problems and must be based on good science. Research supported by companies primarily responds to questions of "need to know" as distinct from "nice to know".

Where there is reason to believe that the environment faces damage, or there is a risk to public health and safety, companies will use research as one means to improve related designs and procedures.

Companies will cooperate in developing and implementing research with industry associations, other companies, government agencies and directly affected parties. To successfully achieve the research objectives, every effort will be made to develop a consensus on the studies to be conducted and the research methods to be employed.

The results of non-proprietary research programs will be available to the public and effectively communicated to directly affected parties.